REMARKS

The title of the invention has been amended to more clearly characterize the invention as a composition rather than a method.

Claims 1-6 remain pending in the application.

Examiner Interview

Applicants' undersigned attorney gratefully acknowledges the telephonic interview initiated by Examiner Chang on March 1, 2006, the purpose of which was to enquire as to whether Applicants had responded to a previous office action dated June 17, 2005. Applicants' undersigned attorney indicated at that time that the failure to respond was inadvertent, and that a petition to revive would therefore be considered.

Rejection under 35 USC 112

Claims 1-2 have been rejected under 35 USC 112, first paragraph, for lack of enabling disclosure. The USPTO contends that the terms "at least about 5.0 grams per liter" and " 5-100 gm per liter" lack antecedent basis in the specification. Applicants traverse this rejection.

Applicants submit that the recited terms are fully enabled by the specification. Support for the term "at least about 5.0 grams per liter of ω-3 fatty acids" can be found in the specification, which states:

> In another aspect, the invention provides a liquid nutritional composition comprising per liter: (a) at least 0.45 gm (450 mg) of ω-3 fatty acids ... [see page 5, lines 17-20]
>
> Generally, such compositions provide much higher levels of the ω-3 fatty acids: preferably from about 1.0 to about 100 gm per liter; more preferably, from about 5.0 to about 10 gm per liter [see page 5, lines 26-29].

The USPTO maintains, however, that mixing of the above range limitations that recite "at least about 5.0 gm per liter" and "from about 5.0 grams to about 100 grams per liter" are not enabled by the above language, and therefore constitute new matter. *In re Smith*, 173 USPQ 679 is cited in support of the rejection.

Applicants submit that *In re Smith* is not relevant to the present claim limitations. *In re Smith*, as also recited in MPEP 2163.05, states:

> "Whatever may be the viability of an inductive-deductive approach to arriving at a claimed subgenus, it cannot be said that such a subgenus is necessarily described by a genus encompassing it and a species upon which it reads."

The present claims are directed, not to genus and subgenus claims, but to range limitations. The mixing of such ranges is acceptable under 35 USC 112, as also noted by MPEP 2163.05, which states:

> "With respect to changing numerical range limitations, the analysis must take into account which ranges one skilled in the art would consider inherently supported by the discussion in the original disclosure. In the decision in *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976), the ranges described in the original specification included a range of "25%- 60%" and specific examples of "36%" and "50%." A corresponding new claim limitation to "at least 35%" did not meet the description requirement because the phrase "at least" had no upper limit and caused the claim to read literally on embodiments outside the "25% to 60%" range, however a limitation to "between 35% and 60%" did meet the description requirement."

In view the foregoing remarks, Applicants respectfully submit that this rejection is improper and should, therefore, be withdrawn.

Obviousness-type Double Patenting Rejection

Claims 1-6 have been rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-20 of commonly assigned

U.S. Patent 6,194,379. In setting forth this rejection, the USPTO notes that a timely filed terminal disclaimer over this commonly owned application would overcome the rejection.

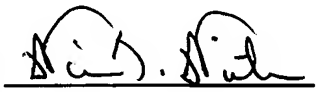
Responsive to this rejection, submitted herewith is a Terminal Disclaimer under 37 CFR 1.321(b) for the above-identified application which specifies that the term of any patent issuing from this application shall not extend beyond the expiration date of U.S. Patent 6,194,379. Also enclosed is an associate power of attorney for the undersigned attorney, who subsequently signed the attached Terminal Disclaimer.

In view of the submitted Terminal Disclaimer, Applicants respectfully request this obviousness-type double patenting rejection be withdrawn.

Conclusion

Applicants respectfully request reconsideration of this application and allowance of claims 1-6.

Respectfully submitted,

By 

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